

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF COLUMBIA  
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5   UNITED STATES OF AMERICA,           )  
6    Plaintiff,    )  
7                   vs.                    ) No. CIV 98-1232 (TPJ)  
8   MICROSOFT CORPORATION,            )  
9    Defendant.   )  
10   \_\_\_\_\_ )

CONFIDENTIAL

60-7371-0014
DEPARTMENT OF JUSTICE
AUG 28 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

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13                   DEPOSITION OF BILL GATES, a witness  
14   herein, taken on behalf of the plaintiffs at  
15   9:09 a.m., Thursday, August 27, 1998, at One  
16   Microsoft Way, Redmond, Washington, before Kathleen  
17   E. Barney, CSR, pursuant to Subpoena.  
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22   REPORTED BY:  
23   Kathleen E. Barney,  
24   CSR No. 5698  
25   Katherine Gale  
26   CSR No. 9793  
27   Our File No. 1-49005

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Q. BY MR. HOUCK: I hand you ~~Exhibit 341~~ <sup>Gov. Trial Ex. 16</sup>

Mr. Gates, and this is a series of e-mails and the one I want to ask you about is the one on the second page from Mr. Siegelman to yourself and others dated April 6, 1995. Take a minute to take a look at it.

Have you finished reviewing the e-mail?

A. I looked at it.

Q. The e-mail starts off as follows: "Pat Ferrel and I have been thinking about this problem a lot and watching Netscape very closely. I too am very worried."

What position did Mr. Ferrel hold at Microsoft in or about April of 1995?

A. He wasn't involved with Windows. He was involved with Marvel.

Q. Is he still a Microsoft employee?

A. I don't think so. I'm not sure.

Q. Do you recall personally being worried about Netscape in or about April of 1995?

1           A.       No.

2           Q.       Do you recall discussing Netscape with  
3 Mr. Siegelman in this time period?

4           A.       I'm sure Russ and I discussed the  
5 effect of the Internet in general on online service  
6 strategies like the work he was doing that became  
7 MSN, but not Netscape in particular, no.

8           Q.       The next sentence of the e-mail says,  
9 "I agree with most of your problem statement," but I  
10 think you underestimate the publisher/ISV threat.  
11 Netscape is already opening up API hooks in their  
12 viewer and many ISVs are hopping aboard."

13                   Do you know what his reference is to  
14 your "problem statement"?

15          A.       No.

16          Q.       Do you understand what he means here  
17 when he talks about opening up API hooks and many  
18 ISVs hopping aboard?

19          A.       I don't know what he meant. I can  
20 guess if you want.

21          Q.       Do you have any understanding as you  
22 sit here what he meant by the language used in this  
23 e-mail?

24          A.       I don't know what he meant. I'd have  
25 to ask him what he meant.

1           Q.       I'm asking for your understanding. Do  
2   you have one or not?

3           A.       Understanding of what? Of what he  
4   meant?

5           Q.       Yes.

6           A.       No. Of what those words might mean,  
7   can guess.

8           Q.       I don't want you to guess. I'm asking  
9   if you have any present understanding of what these  
10   words mean.

11          A.       I've told you I don't know who he means  
12   by "you." I don't know what he means by "problem  
13   statement." So I'm a little unclear about what he  
14   means in this paragraph.

15          Q.       Do you have any understanding -- strike  
16   that.

17                    By ISV do you understand him to be  
18   referring to independent software vendors?

19          A.       That acronym refers to independent  
20   software vendor.

21          Q.       And what does the acronym API refer to?

22          A.       Application programming interface.

23          Q.       Do you recall yourself having a concern  
24   in or about April, 1995 about the possibility that  
25   Netscape was going to open up API hooks in the

1 Netscape Web browser?

2 A. I can't pin any recollection to that  
3 particular time period, no.

4 Q. Did you at some point come to the  
5 conclusion that the prospect that Netscape might open  
6 up API hooks in their browser was a threat to  
7 Microsoft?

8 A. I think in late '95 Andreessen was  
9 talking about how he was going to put us out of  
10 business, suggesting that their browser was a  
11 platform. And, in fact, they did have APIs in their  
12 browser.

13 Q. Do you recall having any concern  
14 yourself before late 1995 with respect to the threat  
15 posed by Netscape opening up API hooks in their  
16 browser?

17 A. No.

18 Q. Do you recall that other folks at  
19 Microsoft had such concerns before late 1995?

20 A. It's hard to recall other people's  
21 concerns. No, I don't recall other people's  
22 concerns.

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MR. HOUCK: I'd like to mark as  
*Gov. Trial exhibit 19*  
~~Exhibit 342~~ a series of e-mails, first one being from  
Nathan Myhrvold to Mr. Gates dated April 24, 1995..  
(The document referred to was marked  
*Gov. Trial Ex. 19*  
by the court reporter as ~~Government Exhibit 342~~ for  
identification and is attached hereto.)

Q. BY MR. HOUCK: Before you take a look  
at that document, do you recall that there was a  
general discussion at Microsoft at the top executive  
level in or about April, 1995, with respect to the  
threat to Microsoft posed by Netscape?

A. No.

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22           Q           BY MR. HOUCK: In or about June 1995,  
23 Mr. Gates, did you become involved in the planning  
24 for some meetings with Netscape?

25           A           No.

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*Gov. trial exhibit 536*  
The next e-mail I want to ask you about  
is on page 231 of the document, and it's an e-mail  
from Paul Maritz to various people including yourself  
regarding the Netscape meeting, and it's dated June  
5, 1995.



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11           Q       Here Mr. Maritz reports that he did not  
12 get the impression from the meeting he had that  
13 Netscape was ready for a broad, strategic  
14 relationship.

15                   Do you see that?

16           A       Do you think that refers to a meeting  
17 he had? I don't think so.

18           Q       Let me refer you to page 596, Bates No.  
19 596.

20           A       Okay.

21           Q       It's e-mailed the same date. And it  
22 says,

23                   "Attached is my summary of the meeting that  
24 Nathan, Paul and I had with Jim Barksdale of  
25 Netscape."

1                   Do you understand the reference of Paul  
2 to be a reference to Paul Maritz?

3           A       Oh, maybe he is talking about a meeting  
4 he had.

5           Q       Do you have any recollection of  
6 discussing Mr. Maritz's impression of this meeting  
7 with Netscape?

8           A       I didn't think Paul had met with  
9 Netscape.

10          Q       So you have no present recollection of  
11 discussing with Mr. Maritz his views based on a  
12 meeting he had with Mr. Barksdale in or about the  
13 early part of June 1995?

14          A       No

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3 Q. Let me show you Exhibit 591 -- or I  
4 guess it's <sup>Deposition Ex 391</sup> ~~Exhibit 391~~. This purports to be a  
5 message to you dated April 18, 1995, to you and other  
6 people.

7 (The document referred to was marked  
8 by the court reporter as <sup>Gov. Deposition Ex. 391</sup> ~~Government Exhibit 391~~ for  
9 identification and is attached hereto.) ;

10 Q. BY MR. BOIES: Did you receive this  
11 message in or about April of 1995?

12 A. I don't remember receiving it, but I  
13 have no reason to doubt that it was sent to me.

14 Q. Let me ask you to look at the bottom of  
15 the first page, next to last paragraph, the sentence  
16 that begins "This does not mean that Netscape needs  
17 to be a direct competitor." Do you see that?

18 A. Yes.

19 Q. Do you recall discussions in or about  
20 April of 1995 about whether or not Netscape would or  
21 would not be a direct competitor of Microsoft?

22 A. I'm sure there was some discussion  
23 about Netscape and the whole Internet phenomenon, and  
24 particularly what that meant about the business  
25 Nathan was in charge of, which was Marvel. I don't

1 remember specifically if we figured out whether they  
2 would or wouldn't be a competitor or what they were  
3 doing.

4 Q. Do you recall communications within  
5 Microsoft in or about April of 1995 about what might  
6 be done to be sure that Netscape did not become a  
7 direct competitor of Microsoft?

8 A. No.

9 Q. Do you recall any communications within  
10 Microsoft in or about April of 1997 relating to what  
11 Microsoft might do to influence whether or not  
12 Netscape became a direct competitor of Microsoft?

13 A. No.

14 Q. Do you recall any discussions within  
15 Microsoft at any time or any communications within  
16 Microsoft at any time relating to what Microsoft  
17 might do to influence whether Netscape became a  
18 direct competitor of Microsoft?

19 A. No.

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